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# THE CORPORATION JOURNAL

VOL. IV, No. 94

JANUARY, 1920

PAGES 81-104

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Published monthly by  
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

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*The policy of The Corporation Trust Company in the organization, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.*

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## Corporations a Modern Economic Necessity

*Excerpt from a recent Address by Hon. Francis M. Hugo,  
Secretary of the State of New York:*

“PRACTICALLY all manufacturing, transportation and commercial enterprises of any magnitude are conducted by corporations. They are the vehicles of trade. And though like many other conveniences, they may be and sometimes are employed for the perpetration of wrong, they are indispensable to modern industry, and it is to the interest of the community at large that they be permitted the fullest freedom of action consistent with a sound public policy.”

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37 Wall Street, New York

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## What The Corporation Trust Company and Affiliated Companies Do

### *Departments*

**Corporation Department**—Assists attorneys in the organization of corporations and in the licensing of foreign corporations in every state and in the provinces of Canada.

**Report and Tax Department**—Attends for attorneys to corporation reports and tax matters in every state and in every province of Canada.

**Legislative Department**—Reports on pending legislation; furnishes copies of bills and new laws enacted by Congress.

**Trust Department**—Acts as trustee under deed of trust, custodian of securities, escrow depository and depository for reorganization committees.

**Transfer Department**—Acts as registrar and transfer agent of stocks, bonds and notes.

**Federal Department**—Reports decisions of the United States Supreme Court, rulings of the Interstate Commerce Commission, Federal Trade Commission, Bureau of Internal Revenue and Federal Reserve Board and other Government Departments.

Furnishes agent at Washington for common carriers to accept service of orders, processes, etc., of Interstate Commerce Commission.

### *Services*

**Federal Income Tax Service**—Covers the Federal Income Tax Law and the official regulations, etc., bearing thereon.

**Federal War Tax Service**—Covers practically all the strictly Internal Revenue Tax Laws, except the Income Tax Law, due to the war, and the official regulations, etc., bearing thereon. (Does not touch on beer, wine, spirits, soft drinks, tobacco, narcotics or child labor.)

**Federal Reserve Act Service**—Covers the Federal Reserve Act and the official regulations, etc., bearing thereon.

**Federal Trade Commission Service**—Covers the Federal Trade Commission Act and The Federal Anti-Trust Act (the Clayton Act) and the official orders, rulings, complaints, etc., bearing thereon.

**New York Income Tax Service**—Covers the New York Personal and Corporation Income Tax Laws and the official regulations, etc., bearing thereon.

### *The Corporation Journal*

The object of The Corporation Journal is to furnish to corporation attorneys, and others interested, a brief account of current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney upon which he may rely for accuracy and to which he may conveniently refer. Cross references are made to preceding pages and a cumulative

index is issued from time to time. The Corporation Journal is issued monthly except in July and August, and it is sent without charge to those requesting that their names be placed upon the mailing list.

A substantial ring binder will be furnished upon receipt of \$1.50. Copies of The Corporation Journal sent to users of this binder are punched for ready insertion.

# THE CORPORATION JOURNAL

*Edited by John H. Sears*

VOL. IV, No. 94

JANUARY, 1920

PAGES 81-104

## Excess Profits Tax May be Replaced by Heavier Impost on Incomes

*Ways and Means Committee to Consider Revision of Tax Laws.  
No Immediate Relief for Taxpayers in Sight.*

FROM many sources come vigorous protests against the excess profits tax law. At the recent meeting of the American Economic Association, held in Chicago, Dr. T. S. Adams, formerly chairman of the Advisory Tax Board of the Bureau of Internal Revenue, contended that this law should be repealed as of the thirty-first of next December. Unless its application is limited to the present year, in the opinion of Dr. Adams, the auditing of returns for the years 1917 and 1918 will not be finished for some time to come. In the place of the excess profits tax law, Dr. Adams suggests that corporations be permitted to deduct dividends distributed before reaching net profits subject to the tax. On that portion of income remaining in undistributed earnings or surplus, Dr. Adams recommends a tax of from 20% to 25%. Individual stockholders would thus assume the payment of normal and supertax on the large dividends which corporations would be influenced to distribute. As opposed to this plan, it has been contended that corporations would not retain sufficient surplus to take care of contingencies arising in the ordinary course of business.

From Chairman Colver of the Federal Trade Commission has come the suggestion that a gross sales tax be substituted for the excess profits tax. In advocating reform in this tax, Secretary Glass said:

"The revenue sacrificed by elimination or reduction of this tax must be sought in an increase of the normal income tax (from which the income on Liberty bonds is exempt) and of the lower brackets of the surtax. The topmost brackets of the surtax have already passed the point of productivity, and the only consequence of any further increase would be to drive the possessors of these great incomes more and more to place their wealth in the billions of dollars of wholly exempt securities heretofore issued and still being issued by States and municipalities, as well as those heretofore issued by the United States. This process not only destroys a source of revenue to the Federal Government, but tends to withdraw the capital of very rich men from the development of new enterprises and place it at the disposal of State and municipal Governments upon terms so easy to them (the cost of exemption from taxation falling more

heavily on the Federal Government) as to stimulate wasteful and non-productive expenditure by State and municipal Governments."

This is the position taken by Representative Cordell Hull, Democrat, member of the Ways and Means Committee and author of the income tax law:

"It was my contention when this bill was up for passage that it could only properly be employed as a war measure. It was a natural development of the experience of the early days of the war and for war needs. It was adopted first in Scandinavian countries, when it was observed that certain lines of business, notably shipping, were making very large profits on account of the war. A law was passed to reach these abnormal profits, and out of these efforts, aimed at only one or a few lines of business, developed the excess profits tax laws. In all leading countries swollen profits earned under war conditions were more inviting as a subject of taxation, and justly so. Some fourteen Governments, including our own, passed excess profits laws. Such a law was difficult to frame on account of the complexities involved and inequities were inevitable.

"In the needs of the war, and the paramount demands placed on all by it, these inequities were of necessity overlooked, but in my opinion an excess profits tax is not sufficiently equitable for normal peace times. In repressing the spirit of enterprise characteristic of this country it will retard our development. New ventures are discouraged. In order to avoid the payment or lessen the amount of the excess profits tax, unnecessary and

wasteful expenditures are frequently made, as in the payment of extravagant salaries. Another ill effect is overcapitalization, in order to increase the amount of exemption under the law. Then again it is difficult to prevent this kind of tax from being passed on to the consumer and thereby increasing the cost of living.

"I think if the earnings were distributed and then reached through individual income taxes, the chance to pass them on to the public would be much reduced. Between the middle income taxes and the higher ones more can be collected than we have collected. These could be jacked up substantially, say on income from \$50,000 to \$250,000. Above that the rate is so high that they have become less productive, and in this class, I am informed, there has been a falling off of 65 per cent. from 1917 to 1918 in the amount collected. It has been suggested that the income taxes be readjusted from the middle upward and that there be an increase in the normal income tax. By the law the rates are reduced in 1919 from 12 to 8 per cent. on incomes above \$4,000, in excess of credits, and from 6 per cent. to 4 on incomes less than \$4,000, in excess of credits. These rates could be made five and ten, respectively.

"At this session I do not think any more can be undertaken than to iron out some of the most objectionable inequalities in the excess profits law, and I doubt whether those who are in favor of affording this relief to the business world are able to bring it about."

## Growing Tendency for States to Levy Tax on Personal Incomes

**T**HE income tax is firmly established. It has come to stay. Its status has been clearly demonstrated. With one great source of revenue eliminated, and with expenses mounting ever higher, several of the states have been forced to turn to it as a solution of the problem of taking in more money than is paid out. Before long, others besides the states listed below will undoubtedly impose a tax upon personal incomes. Even the municipalities threaten to do so.

The ease with which an income tax can be collected has caused many states to seriously consider its adoption. Each year will undoubtedly see additional ones added to the list of those which have already followed the lead of the Federal Government.

The following states now have income taxes upon individuals and corporations:

ALABAMA	MASSACHUSETTS
MISSOURI	NEW MEXICO
NEW YORK	NORTH DAKOTA
VIRGINIA	WISCONSIN

These states have a tax on individual incomes only:

DELAWARE	MISSISSIPPI
NORTH CAROLINA	OKLAHOMA

A number of Legislatures meet the coming month and there are rumors that some will adopt income tax laws. A review of the provisions of the acts now in force shows that they are based upon the Federal law in many respects, and that the rulings and regulations of the state

commissioners or other taxing body closely follow those of the Federal Government.

In a recent letter to The Corporation Trust Company, Chairman John H. Mooring of the Alabama State Tax Commission stated his intention of officially adopting Regulations 45, wherever applicable, in the construction of the recently enacted Alabama statute. Other income tax regulations promulgated by the Commissioner of Internal Revenue will also, according to information received from authoritative sources, govern in the enforcement of the State law.

### New York State Comptroller's Income Tax Regulations Issued

**W**HAT is meant by "characteristic promptness", as applied to The Corporation Trust Company's tax Services, was recently made clear when the New York State Comptroller's Income Tax Regulations were issued. Within twenty-four hours after release on January 9, the full text of these Regulations—accurate and official in every detail, fully indexed and cross-referenced—was in the hands of subscribers to this Company's New York Income Tax Service.

Inasmuch as the Regulations occupied more than one hundred printed pages, and were anxiously awaited by taxpayers, this achievement has given rise to much favorable comment.

## Taxation a Subject of Increased Importance to Corporation Attorneys

VERY few years ago, the question of taxes was of slight interest to the average business man. Nor did taxation require much attention from the busy attorney. Only in rare instances had it become a problem. Two taxes—one local and one State—were all that many corporations had to contend with. These were paid on a fixed date without further ado.

How different today. With the number of reports and statements steadily increasing, business men, corporation officials and lawyers are having great difficulty in keeping track of the number of taxes, with their dates of filing, and with the multiplicity of regulations governing each.

During 1919, the average business man was called upon to file with the Federal Government alone three reports—corporations, eleven. The state and local tax authorities' demands vary with the locality. The adoption by a number of states of an income tax, carrying with it a duplication of many of the Federal tax reports, with only slight changes, adds further to the burden.

Knowledge of the rulings and regulations of the Federal tax authorities is now absolutely necessary if mistakes and penalties are to be avoided. And such knowledge must be based upon the very latest information if it is to be of value. It is safer to have no ruling at all than to be in possession of one which has been modified or superseded. Ignorance of the latest

regulations frequently results in the payment of heavy penalties.

\* \* \*

As the tax problem grows in importance, attorneys turn in ever increasing numbers to The Corporation Trust Company's *Federal Income Tax Service* and *War Tax Service* for their information. These Services are almost universally recognized in legal, business and financial circles as the authorities on the administration of Federal tax laws.

### Record Corporation Tax involved in General Motors Capital Increase.

*Attorneys for General Motors Corporation handle charter amendment through Wilmington, Delaware, office of The Corporation Trust Company System.*

WHEN the General Motors Corporation recently filed with the Delaware Secretary of State a certificate of amendment to its charter, the way was paved for the payment of the largest corporation tax on record in Delaware. This amounted to \$229,600.

The corporation's authorized capital stock is now as follows:

\$20,000,000 preferred stock, par value \$100;

\$500,000,000 7% debenture stock, par value \$100;

\$90,000,000 6% debenture stock, par value \$100;

50,000,000 shares of common stock, no par value.

By this increase, the General Motors Corporation becomes the largest industrial corporation in the United States.

## Corporations in New York

*Portion of a paper presented by the Hon. Francis M. Hugo, Secretary of State of New York, before the Forty-third annual meeting of the New York State Bar Association, held January 17, 1920, in New York City.*

**M**ORE than 15,000 business corporations were formed under the laws of New York during the calendar year of 1919—an increase of 7,000 over 1918—and the Secretary of State collected, in filing, recording and certification fees, \$581,118.50. The organization taxes amounted to \$1,463,384.75. If the annual franchise and income taxes were added, the revenues of the State derived directly from the organization of corporations and the exercise of their primary franchises would amount to approximately \$40,000,000, or 42 per cent. of the total expenditures for the maintenance of the State Government during the fiscal year last past.

### Corporations Indispensable

"Practically all manufacturing, transportation and commercial enterprises of any magnitude are conducted by corporations—they are the vehicles of trade. And though, like many other conveniences, they may be and sometimes are employed for the perpetration of wrong, they are indispensable to modern industry, and it is to the interest of the community at large that they be permitted the fullest freedom of action consistent with a sound public policy.

### Shares Without Par Value

"Another statute which should be amended is that which governs the issuance of shares without par value. This law, enacted in 1912, has demonstrated its usefulness and is being employed more and more as lawyers and the public at large are becoming better acquainted with it, but experience has disclosed some imperfections, only one of which I will speak of now. The fault to which I allude is found in the opening clause of Section 20 of the Stock Corporation Law, which reads:

"No corporation formed pursuant to Section 19 hereof shall incur any debts until the amount of capital stated in its certificate of incorporation shall have been fully paid in money, or in property taken at its actual value. In case the amount of capital stated in its certificate of incorporation shall be increased as herein provided, such corporation shall not increase the amount of its indebtedness then existing until it shall have received in money or property the amount of such increase of its stated capital. The directors of the corporation assenting to the creation of any debt in violation of this section shall be liable jointly and severally for such debt."

"Now the stated capital which must be paid in before the corporation may begin business or incur debts is the same thing as 'The amount of capital with which the corporation will carry on business,' which amount must, pursuant to



Section 19 of the Stock Corporation Law, be stated in the certificate of incorporation and must be not less than the amount of stock having a preference as to principal, plus five dollars for each share without par value.

"Thus if you state in your certificate of incorporation that the corporation may issue 10,000 shares, of which 5,000, of the par value of \$100 each, are preferred as to principal, and 5,000 are without nominal or par value, you must also state, as the amount of capital with which the corporation will carry on business, a sum of \$525,000 or more, and, having done that, you cannot lawfully begin business or incur debts until that whole \$525,000 is paid in money or property taken at its actual value. Aside from the question as to whether it is necessary to require the payment of any fixed sum into the corporate treasury on account of shares without par value, it is certainly unnecessary to require *full* payment of the *entire stated capital* before the corporation can even begin business or incur any debts. This feature of our statute has driven some large corporations away from New York and into other states whose laws do not impose this condition, which in many instances is prohibitive.

"A bill has already been prepared for introduction in the current session of the Legislature, which, if enacted, will permit corporations of this kind to begin business before all of their shares are sold and will provide that directors shall be personally liable for such debts only as are in *excess* of the amount of capital paid in at the time they are contracted.

"If the law was so amended, a corporation capitalized as in the example I have just used could, upon selling say \$50,000 worth of stock, begin business and obtain credit up to that amount and, from time to time, as opportunity offered, issue additional stock and extend its credit proportionately.

#### Corporate Names

"There are upwards of 200,000 names on the index of corporations in the office of the Secretary of State and there is a growing difficulty in finding an appropriate name for a new company, which is not the same as, or closely similar to one which has already been used. Fully fifty per cent. of the names proposed from day to day for new corporations are found to conflict with names on the index. Without doubt a great many, possibly 50,000 or more, of the corporations whose names are carried on the index, are inoperative and practically defunct. Yet they are, so far as the record shows, authorized to do business, and must be so regarded. Several efforts have been made to obtain the enactment of a law which would provide a practical and expeditious method of clearing the names of these dead corporations from the official records, but all such attempts have failed.

"The lack of success has been due to a number of factors, among them being conflict of opinion as to just what method should be followed in declaring the corporations dissolved; reluctance to appropriate funds to meet the expense of whatever course of procedure is adopted, and lack of realization by the individual legislators that there is urgent need for such action.



"Something must be done very soon or else the incorporators of new companies will have to give them numbers in lieu of names.

"Some of the states have laws permitting the Governor to proclaim the forfeiture of charters for non-payment of annual franchise taxes. Such a law in New York would probably give a measure of relief, but it would not reach the majority of inactive companies, because most of them are so dead that they are not carried on the records of the Tax Department.

"Any procedure, to be practical and effective, will have to be of a summary nature. In most cases it will be impossible to serve actual notice upon the corporations to be dissolved, for they maintain no office, and their incorporators, directors and officers have died or removed.

"The Secretary of State has from time to time recommended amendments to the corporation law and many of the present statutes have been drafted in his office. Among such laws which have been enacted during the present administration are the following:

"A law which directs the filing in the office of the Secretary of State of a certified copy of every order of the courts dissolving a corporation or annulling its charter. Formerly, corporations might be dissolved by certain kinds of judicial proceedings, without such dissolution or annulment becoming a matter of record in any department of the State Government.

"A law permitting a change of name of a business or a membership corporation by vote of its stock-

holders or members without a court order. This change of procedure brought the New York law into uniformity, in that respect, with those of all other states of the Union, save two.

A law authorizing corporations having charters which do not permit the issuance of shares without par value, to reorganize and thereby obtain the advantage of the law of 1912 which provides for the issuance of such shares.

"The accelerated birth rate of corporations during the year last past was doubtless due to a variety of causes, chief among which is probably the removal of the artificial restraints which were imposed upon many kinds of industry during the war. Projects had been conceived but had to await the cessation of hostilities before they could be financed and put into operation."

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**When Common Shares Have  
no par value, Preferred  
must be Preferred as  
to Principal.**

The Secretary of State of New York has recently issued the following statement:

"Prior to the year 1912, the laws of this State permitted the formation of stock corporations having capital stock only, divided into shares with par value. By the enactment of Chapter 351 of the Laws of 1912, certain corporations, other than monied corporations and corporations under the jurisdiction of the Public Service Commission, were authorized to issue shares without any designated par value. Section 19 of the Stock

Corporation Law, as enacted by the above chapter, stripped of unnecessary verbiage, provides that upon the formation of any such stock corporation, the certificate of incorporation may provide for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value, by stating in such certificate:

"1. The number of shares that may be issued by the corporation, and if any of such shares be preferred stock, the preferences thereof. If such preferred stock, or any part thereof, shall have a preference as to principal, the certificate shall state the amount of such preferred stock having such preference, the particular character of such preferences, and the amount each share thereof, which shall be five dollars, or some multiple of five dollars, but not more than one hundred dollars.

"2. The amount of capital with which the corporation will carry on business, which amount shall be not less than the amount of preferred stock (if any) authorized to be issued, with a preference as to principal, and in addition thereto, a sum equivalent to five dollars, or to some multiple of five dollars, for every share authorized to be issued, other than such preferred stock.

"The proposed certificate of incorporation provides: 'The number of shares of capital stock that may be issued by this corporation is one hundred and fifty thousand (150,000) of which fifty thousand (50,000) shares of the amount or par value of one hundred dollars (\$100) each are to be preferred

stock, and one hundred thousand (100,000) shares are to be common stock, without any nominal or par value.' There is no provision that the preferred stock shall be preferred as to principal.

"In drafting the certificate of incorporation, the incorporators might provide that the corporation should have capital stock with designated par value under subdivisions 3 and 4 of Section 2 of the Business Corporations Law, or they might provide that the corporation be authorized to issue either all, or a portion of its shares, without nominal or par value. If they chose the latter method, then they could provide, under Section 19 *supra*, that all the shares should be without nominal or par value, a specified proportion of which might be common shares and the remainder preferred shares with preference as to dividends or other matters, other than preference as to principal or they might provide that the corporation should, under Section 19 *supra*, issue a portion of its shares without nominal or par value, and the remainder of its shares with a designated par value of not less than five dollars, nor more than one hundred dollars, provided such preferred shares were preferred as to principal.

"The corporation has, however, attempted to combine the two classes of corporations. It seeks to make Section 19 read 'that upon the formation of any stock corporation, the certificate of incorporation may provide for the issuance of the shares of such corporation, other than preferred stock having a preference as to principal, *with or without nominal or par value.*' They have no right to insert the

above underscored words in the statute. The statute itself is clear. From the language employed, it is difficult to imagine how the purpose of the legislature in enacting this section can be misunderstood. The words used are so comprehensive and so clear and unambiguous, that words not expressed in the statute should not be read into it. If the legislature had intended to permit the issuance of shares with par value, and without preference as to principal, it would have been very easy for it to have so provided. In ascertaining what the legislature did intend by the enactment, the words employed should be taken in their ordinary meaning and we should not attempt to spell into the statute words not contained therein. This statute, if the ordinary meaning be accorded to the language used, is plain and there is no necessity to resort to the use of other words not used.

"Paragraph 2 of Section 19 provides that the certificate shall state the amount of capital with which the corporation may carry on business, which amount shall be not less than the amount of preferred stock (if any) authorized to be issued with a preference as to principal, and in addition thereto, a sum equivalent to five dollars, or to some multiple of five dollars, for every share authorized to be issued, other than such preferred stock. If the statute were to be construed as the incorporators here intend, then there would be no satisfactory way of determining the amount of capital to be stated as that with which the corporation is to carry on business.

"Another point to be considered is that Section 19, as amended by

Chapter 19 of the Laws of 1917, permits the issuance of shares for such consideration as may be prescribed in the certificate of incorporation, or for their fair market value, or for such consideration as may be prescribed by the consent of the holders of two-thirds of each class of shares outstanding, and further, that all shares so issued shall be deemed fully paid and non-assessable. It was certainly never the intention of the legislature to permit the issuance of shares having a designated par value without requiring that the corporation have the equivalent of the par value of such shares in its treasury before beginning business, or without annexing to such shares the stockholders' personal liability for the amount representing the difference between the sum actually paid to the corporation for the shares and their par value. See Section 56 of the Stock Corporation Law.

"Further, Section 23 of the Stock Corporation Law provides that for the purpose of any rule of law, or of any statutory provision, the amount or par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount thereof so specified in such certificate, and the amount or par value of *each other share* shall be deemed to be an aliquot part of the aggregate capital so specified in such certificate in excess of the specified amount, if any, of the preferred stock therein authorized to be issued with a preference as to principal. The incorporators here, however, have attempted to change this by fixing a specified par value for a portion of the shares, although such shares are not to be preferred as to principal."



*Straight from  
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Your Desk*

# THE CORPORATION

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STRAIGHT from authoritative sources to your desk comes the official information found in these Services—the universally recognized authorities on Federal and New York State taxation, used by thousands of lawyers, bankers, corporation officers, accountants, and Government officials—essential for an intelligent solution of the problems of peace-time taxation.

# TRUST COMPANY

# Domestic Corporations

## California.

**Pledgee of Stock May Cause Corporate Books to Show Transaction.**

The pledgee of corporate stock has a right to compel the corporation to cause the transaction to be so entered upon the stock books as to show the names of the pledger and the pledgee, the number or designation of the shares, and the date of the transfer.—*American Trust & Banking Co. v. Union Security Co.*, 184 Pac. 508.

## Delaware.

**Issuance of New Stock Certificate to Replace One Lost.**

The Superior Court of Delaware for New Castle County has recently held that on application by a stockholder to require a corporation to issue a new certificate of stock in lieu of a lost certificate, the corporation should issue a new certificate upon applicant's filing a bond conditioned to indemnify any person who shall thereafter appear to be lawful owner of the stock.—*In re Francis*, 108 Atl. 31.

## Illinois.

**Fiduciary Duty of Directors.**

A corporation entered into a contract with certain persons, who were to receive, in consideration of a license to manufacture and sell patented articles, a per cent of the gross receipts therefor. Directors of the corporation who purchased the licensee's rights, are bound to account to the corporation for the profits received. In becoming the owners of the contract the directors placed themselves in a position where their individual interests were in conflict with their duties as directors.—*Farwell v. Pyle—National Electric Headlight Co.*, 124 N. E. 449.

## Maine.

**Right of Stockholders to have access to Books of Resident Company.**

A non-resident Maine corporation is required to keep books at some fixed place, showing "a complete list of all stockholders." The only exemption of the resident corporation is that the "provision as to the list of stockholders" shall not apply, as it already has a fixed place where all its books are kept. Every reason that can be urged regarding the right to examine the books of a non-resident corporation is equally cogent with respect to the books of a resident corporation. *Bryer v. Wyman*, 108 Atl. 331.

## New Jersey.

**Liability of Officers on Contracts after Repeal of Charter for not Paying Taxes.**

The United States Circuit Court of Appeals, Second Circuit, Judge Rogers dissenting, holds that after a New Jersey corporation had forfeited its charter for non-payment of taxes, but its charter was reinstated by a second proclamation, the corporation must be regarded as having continuously existed. Therefore the directors of such a corporation are not individually liable on contracts made in the corporate name in the interval of default.—*Held v. Crosthwaite*, 260 Fed. 613.

## New York.

**Interference with Business by Discharged Officer.**

An injunction will be issued to restrain a discharged assistant general manager, from continuing to come to the premises belonging to the corporation and assuming to act as when employed. But the injunction should not go so far as to restrain the defendant from per-

forming his duties as a director of the corporation. *Gutmann Silks Corporation v. Reilly*, 189 N. Y. App. Div. 258.

**Subscription Rights Declared with Respect to Stock Held in Trust.**

The Appellate Division, Second Department, holds that where it has been judicially determined that a dividend declared upon stocks held under a testamentary trust is income and belongs to the life beneficiary subscription rights offered to stockholders by the

corporation also belong to the life beneficiary.—*Matter of Baldwin*, 189 N. Y. App. Div. 126.

### Oklahoma.

**Power of a Corporation to Acquire Lease to Prospect for Oil and Gas.**

Section 2, Article 22 of the State Constitution prohibiting the creation of corporations for dealing in real estate except in cities or towns, does not prohibit a corporation from acquiring a lease to prospect land for oil and gas.—*McCray v. Miller*, 184 Pac. 781.

## Foreign Corporations.

### California.

**What Constitutes "Doing Business."**

Taking a single assignment of an installment contract for a sale of a piano is not doing business so as to require qualification. *W. W. Kimball Co. v. Read*, 185 Pac. 192.

### Illinois.

**Voting Trust of New York Corporation Doing Business in Illinois Valid in Illinois.**

The United States Circuit Court of Appeals, Seventh Circuit, holds: "While conceding that a voting agreement was valid in the state of New York (in fact, authorized by the statutes of that state), appellant claims that this corporation was

engaged in mining coal and had its principal offices and place of business in Illinois. We find nothing, however, in the statutes of Illinois or the decisions of its courts that would deny to stockholders of a New York corporation the right to make valid voting trust agreements, and no statute or decision to show that Illinois excludes foreign corporations from doing business in the state on account of the corporation's compliance with the regulations of the chartering state, and we reject as untenable the claim that these votes were illegally cast." In *re O'Gara Coal Co.*, 260 Fed. 742.

## CANADA

*Book on Dominion Company Law Just Published*

A text book on "Dominion Company Law" has just been published by The Ontario Publishing Company, Limited, of Toronto. The author is Thomas Mulvey, Under Secretary of State, and formerly Assistant Provincial Secretary of the Province of Ontario. Attorneys-at-law in this country as well as corporations of the United States doing business in Canada will welcome this complete work pertaining to "The Companies Act of the Dominion of Canada."

A feature of particular advantage to those who are unfamiliar with incorporation in Canada is a synopsis of the Dominion Companies Act and practice. This precedes the text, legal discussion, and citations of authorities relating to the Dominion Companies Act, the Dominion Winding-Up Act, Licensing and Taxation in the various provinces, The Dominion Income Tax Act and War Profits Tax Act and forms for use in connection with the organization of corporations.



**What Constitutes "Doing Business."**

The mere solicitation of business by agents of a foreign corporation in the state does not constitute "doing business" in such a sense as to subject the corporation to the jurisdiction of the courts of Illinois. —*Pemberton v. Illinois Commercial Men's Ass'n.*, 124 N. E. 355.

**Indiana.**

**Contract to Purchase Real Estate Unenforceable by Unqualified Corporation.**

The act of purchasing real estate to be used by a foreign corporation is not an isolated transaction, but constitutes the "doing" or "trans-

acting" of business in the state. Failure to qualify under the foreign corporation prior to entering such a contract renders it unenforceable against the seller. *Lowenmeyer v. National Lumber Co.*, 125 N. E. 67.

**Contract Unenforceable by an Unqualified Foreign Corporation Cannot be Enforced by its Assignee.**

The assignee of a contract by a foreign corporation cannot assert any right thereunder, which could not have been asserted by the foreign corporation. *Lowenmeyer v. National Lumber Co.*, 125 N. E. 67.

## Shares Without Par Value—Organization Tax

The states authorizing shares without par value, and the basis upon which the organization tax is fixed in each case, are as follows:

ALABAMA—As though having a par value of \$100.  
 CALIFORNIA—As though having a par value of \$100.  
 DELAWARE—As though having a par value of \$100.  
 ILLINOIS—As though having a par value of \$100.  
 MAINE—As though having a par value of \$100.  
 MARYLAND—As though having a par value of \$100.  
 NEW HAMPSHIRE—As though having a par value of \$50.  
 NEW YORK—Five cents per share.  
 OHIO—Ten cents per share.  
 PENNSYLVANIA—As though having a par value of \$100.  
 VIRGINIA—As though having a par value of \$100.  
 WISCONSIN—Five cents per share.

For purposes of comparison this table shows organization tax on companies having the number of shares indicated:

	1,000	5,000	10,000	50,000	100,000	200,000
ALABAMA.....	\$100	\$500	\$1,000	\$5,000	\$10,000	\$20,000
CALIFORNIA.....	100	100	100	100	100	100
DELAWARE.....	10	50	100	350	600	1,100
ILLINOIS.....	50	250	500	2,500	5,000	10,000
MAINE.....	10	50	100	500	1,000	2,000
MARYLAND.....	20	100	200	800	1,800	3,800
NEW HAMPSHIRE...	25	100	150	500	1,150	2,150
NEW YORK.....	50	250	500	2,500	5,000	10,000
OHIO.....	100	500	1,000	5,000	10,000	20,000
PENNSYLVANIA.....	333	1,667	3,333	16,667	33,333	66,667
VIRGINIA.....	20	100	200	600	600	600
WISCONSIN.....	50	250	500	2,500	5,000	10,000

## Taxation

### Federal.

**Federal Estate Tax with Respect to Transfer of Corporate Stock. Important Ruling by the Treasury Department**

What the obligations of a corporation or its transfer agent are with respect to the Federal Estate Tax has been a matter of considerable perplexity and doubt.

A letter addressed to The Corporation Trust Company and dated January 10, 1920, from the Treasury Department appears to indicate that the safe procedure to adopt is a requirement by the corporation or transfer agent that there be exhibited to it proof that the estate is not subject to this tax or that the tax has been paid with respect to the entire amount which may be due on all property of the estate or else the company or its transfer agent should be furnished with a certificate of release as provided in Article 100 of Regulations No. 37.

For the information of our readers we quote the letter from the United States Treasury Department referred to above in full:

"In reference to your letter of December 6, 1919, relative to the transfer of corporate stock owned by a decedent at date of death, you are advised as follows:

It is the position of this Bureau that the lien of an unpaid estate tax is not divested by the transfer of the stock upon the books of the corporation. The situation in this respect is the same whether the estate is that of a resident or a non-resident. The lien is satisfied only by payment of the tax, or release of the lien as provided by the present statute (Revenue Act of 1918, Sec. 409). Subject, however,

to the lien, the stock may be transferred; and until further notice this may be done without the special written authorization of the Bureau.

The conditions under which the release of lien will be granted are stated in Article 100 of the present Regulations (No. 37, Revised, 1919) to which you are referred. The Bureau is disposed to grant the release more readily in the case of a resident, than of a nonresident estate, since in the former case there is usually a resident executor or administrator, and property in this country available for the payment of the tax. It is the disposition of the Bureau to expedite the transfer of stock in any case in which doing so will not endanger the collection of the tax."

### New York.

**Stamp Tax on Transfers of Stock.**

Section 270 of the Tax Law of New York imposes on all sales or agreements to sell or memoranda of sales of stock and upon any and all deliveries or transfers of shares, or certificates of stock in any domestic or foreign association, company or corporation, whether made upon or shown by the books of the company, or by any assignment in blank, or by any delivery, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to such stock, or merely with a possession or use thereof, or to secure the future payment of money on each one hundred dollars or face value or fraction thereof, two cents, except in cases where the shares are issued without par value, in which

case the tax shall be at the rate of two cents for each and every share. The law makes it the duty of the person making or effectuating the sale to affix and cancel the stamps. It expressly provides that the tax is not imposed upon the agreement evidencing the deposit of stock as collateral security.

In order that our readers may have in readily accessible form the important rulings and decisions that have from time to time been made with reference to the application of this law, we publish the following:

The law does not impose a tax on original issuance of stock. *People v. Duffy-McInerney Co.*, 122 N. Y. App. Div. 336, affirmed in 193 N. Y. 636 N. E. 1129.

A contract of sale or transfer made and effectuated outside of the State of New York is not rendered subject to tax merely because the record of the transaction is made in the State of New York.—Report of Attorney General, (1913) page 373.

The statute applies to transfers in "associations and companies" as well as corporations.—Report of Attorney General (1911), page 692.

The transfer from the name of a decedent to his executor or administrator as such, is not taxable, but subsequent transfers by the executor or administrator come within the act.—Report of Attorney General (1912), page 211.

Transfers of voting trust certificates constitute transfers of stock within the meaning of the Act.—Report of Attorney General (1911) page 611.

The transfer of subscription certificate for part paid stock is sub-

ject to tax.—Report of Attorney General (1912), page 207.

Transfer of stock from executors to themselves as trustees is taxable.—Report of Attorney General (1910), page 441.

Transfer through power of substitution, if transaction constitutes a transfer, is taxable.—Report of Attorney General (1910), page 537. Transfer of shares of stock under a voting trustee agreement is taxable.—Report of Attorney General (1911) page 77.

Exchanging of shares of one foreign company for shares in another foreign company, made in New York by a transfer agent located there, is taxable.—Report of Attorney General, Oct. 3, 1910.

Surrender of stock to a company which without dissolution has sold its assets to another company is taxable but is not taxable when surrender is made after dissolution of the old company.—Report of Attorney General (1911), page 382.

Surrender of stock by reason of merger agreement is not taxable.—Report of Attorney General (1919), page 526.

A stock dividend is an original issue and therefore not subject to transfer tax.—Report of Attorney General (1910), page 519.

Issuance of shares in the name of a substitute or surviving trustee is not subject to tax.—Report of Attorney General (1912), page 352 and Report of Attorney General (1914), page 345.

### Pennsylvania.

#### *Duty of Corporation with Respect to Inheritance Tax Against its Stockholders.*

Under Article 3, Section 25 of the Act of June 20, 1919, the Auditor General of Pennsylvania is required to collect a transfer inheritance tax

on all property within the Commonwealth of a decedent or a non-resident of the Commonwealth at the time of his death. Section 36 provides that: "No corporation of this Commonwealth or national banking association located in this Commonwealth shall transfer any stock of such corporation or of such banking association, standing in the name of a decedent, whether resident or non-resident or in the joint names of a decedent, unless the Auditor General has filed with said corporation or national banking association a certificate that the tax imposed by this Act on the

transfer of such stock has been fully paid. Any corporation or association making any transfer of the stock, standing in the name of a decedent, resident or non-resident in violation of the foregoing provisions, shall be liable for the payment of the amount of tax to which the property so transferred is subject, under the provisions of this Act, and in addition thereto a penalty of \$1,000, which liability for such tax and interest or the penalty above described or both shall be enforced in an action of debt in the name of the Commonwealth of Pennsylvania, brought by the Auditor General thereof."

**Tax questions to be considered by an attorney when advising clients in which state to incorporate.**

**1. State selected:**

Organization tax on authorized capital.  
Annual tax.  
Local taxes.

**2. Other states in which corporation will do business:**

Qualification tax.  
Annual tax.  
Local taxes.

**3. Federal taxes:**

Corporation income tax.  
Excess profits tax.  
Capital stock tax.  
Original issue tax on stock.  
Transfer tax on stock  
Miscellaneous taxes.

**4. Stockholders:**

Income tax, if any, required to be paid on apparent profit made when stock is issued for property.

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## SOME IMPORTANT MATTERS FOR FEBRUARY AND MARCH

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*This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. The State Report and Tax Service maintained by The Corporation Trust Company System sends timely notice to attorneys for subscribing corporations of reports and tax matters requiring attention from time to time, furnishing information regarding forms, practice and rulings.*

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**ALABAMA**—Annual income Tax due between January 1st and June 1st—Domestic and Foreign Corporations.

**ALASKA**—Annual Report due on or before March 1.—Foreign Corporations.

**ARIZONA**—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

**CALIFORNIA**—Annual License Tax due between January 1 and 1st Monday of February.—Domestic and Foreign Corporations.

Capital Stock Affidavit due between January 1 and 1st Monday of February.—Foreign Corporations.

Report on General Franchise due within 10 days after first Monday in March.—Domestic and Foreign Corporations.

**COLORADO**—Annual Report due within 60 days after January 1.—Domestic and Foreign Corporations.

**CONNECTICUT**—Annual Report due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

**DELAWARE**—Annual Franchise Tax due between 3rd Tuesday in March and July 1.—Domestic Corporations.

**ILLINOIS**—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Reports due on or before March 1.—Foreign Corporations engaged in manufacturing.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Annual Report due between January 1 and March 1.—Domestic Corporations.

Annual Statement due on or before April 1.—Foreign Corporations

MASSACHUSETTS—Annual Report of Information for Income Tax due between January 1 and March 1.—Domestic and Foreign Corporations.

Franchise Tax Return due between April 1 and April 10.—Domestic Corporations and certain Foreign Corporations.

MICHIGAN—Annual Report due in January or February.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report due between January 1 and March 1.—Foreign Corporations.

Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before March 1.—Domestic Corporations and Foreign Manufacturing Corporations.

List of Stockholders due on or before March 1.—Domestic Corporations and Foreign Corporations.

NEW MEXICO—Annual Income Tax Report due between January 1 and March 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Return of withholding agents due between January 1 and March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Excise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Annual Income Tax Return between January 1 and March 1.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due between January 1 and February 28.—Domestic and Foreign Corporations.

Bonus Report due between January 1 and February 28.—Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report between January 1 and March 1.—Foreign Corporations.

TEXAS—Annual Capital Stock Report due between first day of January and the 15th day of March.—Domestic and Foreign Corporations that are required to pay annual franchise tax.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Annual Tax Return due on or before March 1.—Domestic and Foreign Corporations.

Annual License Tax payable on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due between January 1 and March 31.—Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Excise Tax Return due on or before March 1.—Domestic and Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and March 1.—Domestic Corporations.

Annual Report due between January 1 and March 1.—Foreign Corporations.

Income Tax Return due between January 1 and date fixed annually by State Commissioner. Domestic and Foreign Corporations.



## Publications

The following publications may be obtained without charge from the nearest office of The Corporation Trust Company System:

*New York State Personal Income Tax Law*, text in full of the Act passed by the Legislature, April 19, 1919, and approved by the Governor, May 14, 1919.

*New York Corporation Income Tax Law*, as amended by the 1919 Legislature.

*War Revenue Act*, 1918, is the title of our pamphlet, which contains a complete copy of the text of the new Federal tax law, approved by the President February 24, 1919.

*Issuance, Transfer and Registration of Corporate Stock* is the title of a pamphlet printed to supply the demand for information on these subjects.

*The Corporation Journal* issued monthly except in July and August.

*Business Corporations Under the Laws of Delaware* is the title of a pamphlet containing the advantages of the law, statutory requirements and forms including a description of shares without par value. The General Corporation Laws are published in a separate booklet.

*The General Corporation Act of New Jersey* as published by the Department of State may be secured at any of our offices.

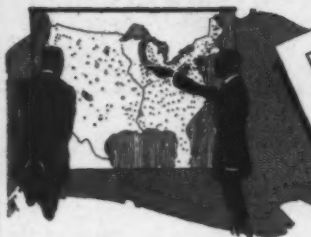
*Illinois General Corporation Act and Securities Law*.

*Business Corporations Under the Laws of Maine* is the title of a pamphlet which contains a description of advantages of incorporation under Maine laws, features of shares without par value, statutory requirements and forms. The text of the statutes relating to business corporations is also available in a separate pamphlet.

*New York Non-Par Value Law*, a reprint of Corporation Journal No. 35, contains a copy of the New York non-par value law and a copy of the certificate of incorporation of the Wisconsin Edison Company, the first large company incorporated thereunder.

*Extracts from the Statutes of the Various States Relating to the Admission of Foreign Business Corporations* may be had by counsel who are interested in the qualification of a particular corporation in a state or group of states. Kindly advise which state you are interested in. These printed statements show the documents to be filed, fees and taxes to be paid and the statutory penalties for failure to comply in the states under consideration.

*Transfer Requirements* is the title of a card containing a list of the requirements to be observed in transferring various classes of stock in New York.



## The Graphic Testimony of a Pin-Studded Map

A SUBSCRIBER to our tax Services chanced to see the huge map which hangs in our directors' room. He paused before it, fascinated by the array of pins studding its surface—was amazed to learn that we had never utilized what he termed its "graphic testimony".

We were impressed. The suggestion soon took shape in the advertisement reproduced above. It is not surprising that results have been more than gratifying. For what could be more convincing evidence of the merit of these tax Services than the widespread distribution which they enjoy today, or the fact that practically all of the thousands of subscriptions are renewed each year?

As one subscriber dramatized the possibilities of a pin-studded map, others have suggested refinements and improvements reflected in the steady development of our tax Services. Their cooperation has enabled us to satisfy a definite need of American business—has made possible the "graphic testimony" of the map.

**Pins that prove a point**

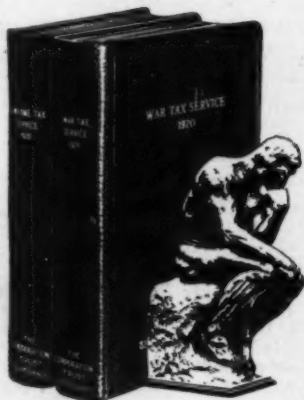
Hangings in our directors' room is a huge map of the United States, crowded from Maine to California with the useful pins of many others, each pin a testimony of the number of subscribers to our tax Service within a given territory.

Many thousands of subscribers in these States are also represented by a few pins. Among these are prominent firms of every nature, such as manufacturers, and transportation companies.

Although such subscribers have been placed upon a waiting list, only one in every hundred is contacted, while others wait more than 180 days for renewal of subscription.

The fact that our Services enjoy standing of endorsement in your State, Washington, Chicago, New York, and other great commercial centers, is evidence of the widespread acceptance of our tax Services—the most important indication on matters in the United States.

**The Corporation Trust Company**  
31 Wall Street  
New York City



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37 Wall Street

New York

